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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 RSUI INDEMNITY COMPANY, a New  
Hampshire Stock Company; and EVANSTON  
12 INSURANCE COMPANY, an Illinois corporation

13 Plaintiffs,

14 vs.

15 SPORTSMAN'S ROYAL MANOR, LLC, a  
Nevada Limited Liability Company; DOMONIQUE  
16 BROWNING-PALMER, individually; GARY  
BRENNAN, individually;

17 Defendants.

18 SPORTSMAN'S ROYAL MANOR, LLC; GARY  
19 BRENNAN;

20 Counter-claimants,

21 vs.

22 RSUI INDEMNITY COMPANY; EVANSTON  
INSURANCE COMPANY; KAERCHER  
23 CAMPBELL & ASSOCIATES INSURANCE  
BROKERAGE OF NEVADA, LLC; KAERCHER  
24 INSURANCE, AN ALERA GROUP AGENCY,  
LLC; and DOE DEFENDANTS 1-10; ROE  
25 DEFENDANTS 11-20;

26 Counter-defendants.

Case No.: 2:20-cv-01484-CDS-VCF

**STIPULATION AND ~~PROPOSED~~  
ORDER TO EXTEND  
DISCOVERY DEADLINES AND  
AMEND SCHEDULING ORDER  
(ECF NO. 91)**

**[THIRD REQUEST]**

27 The parties, RSUI Indemnity Company ("RSUI"), Evanston Insurance Company  
28 ("Evanston"), Sportsman's Royal Manor, LLC ("SRM"), Gary Brennan ("Brennan"),

1 Domonique Browning-Palmer (“Browning-Palmer”), Kaercher Campbell & Associates  
2 Insurance Brokerage of Nevada, LLC (“Kaercher Campbell”), and Kaercher Insurance, an Alera  
3 Group Agency, LLC (“Kaercher Insurance,” and with Kaercher Campbell, “Kaercher”), by and  
4 among the undersigned counsel, hereby submit this stipulation requesting that this Court extend  
5 all deadlines within the Stipulation and Order to Extend Discovery Deadlines and Amend  
6 Scheduling Order (Second Request) (ECF No. 91) by an additional 180 days. This is the parties’  
7 third request to extend discovery deadlines in this case. This stipulation is entered into in good  
8 faith and not for purposes of undue delay.

9 The current Scheduling Order provides the following discovery deadlines: Discovery  
10 Cut-Off: October 11, 2022; Amend Pleadings/Add Parties: July 13, 2022; Initial Expert:  
11 August 12, 2022; Rebuttal Expert: September 12, 2022; Dispositive Motions: November 10,  
12 2022; Pre-Trial Order: December 12, 2022 (subject to LR 26-1(b)(5)). (ECF No. 91.)

13 As further set forth below, good cause exists to extend the discovery deadlines in this  
14 matter by another 180 days. All parties in this matter, *except Kaercher*, have entered into a  
15 global settlement to resolve and dismiss the claim/counterclaims between them in instant federal  
16 court action as well as in the underlying state court tort litigation. SRM’s and Brennan’s  
17 counterclaims against Kaercher are not a part of this settlement. A written Settlement  
18 Agreement has been approved by the settling parties and several of the settling parties have  
19 already executed the Settlement Agreement. One of the settlement terms requires that this Court  
20 approve good faith settlement motions that will be filed by RSUI and Evanston shortly. Another  
21 settlement term calls for the assignment to Browning-Palmer of SRM’s and Brennan’s  
22 counterclaims against Kaercher in the instant action. In order to accomplish the assignment, the  
23 Settlement Agreement requires that Sportsman’s and Brennan file a substitution of parties within  
24 three (3) judicial days of the effective date of the global settlement which will not occur until the  
25 good faith settlement motions are granted and the Settlement Agreement is fully executed. Upon  
26 the effective date, the settling parties will be filing stipulations for dismissal of the  
27 claim/counterclaims between them.

28 Since early this year, the settling parties have been invested in finalizing the terms of the

1 global settlement between them, which will soon lead to a dismissal of a significant portion of  
2 the instant litigation. Indeed, only the counterclaims against Kaercher will remain. Therefore,  
3 the settling parties focus has been on settlement and preserving funds available for settlement.  
4 This discovery extension will allow the settling parties to continue to focus on settlement  
5 (including the time needed to have the good faith settlement motions decided) while also  
6 allowing SRM and Brennan (and anticipated assignee, Browning-Palmer) and Kaercher the time  
7 they need to conduct further needed discovery on the counterclaims, including extending the  
8 expert disclosure deadlines.

9 In compliance with LR IA 6-1 and 26-3, the parties submit that good cause exists to  
10 extend the above-referenced discovery deadlines by an additional 180 days.

11 **1. Discovery completed**

12 On August 10, 2020, RSUI and Evanston filed a Complaint against SRM, Brennan, and  
13 Browning-Palmer seeking declaratory relief concerning the insurers' rights and obligations under  
14 certain policies of excess insurance that RSUI and Evanston issued to SRM and Brennan for  
15 policy period March 13, 2015, to March 13, 2016, with respect to a claim for personal injury  
16 damages made by Browning-Palmer arising out of a 2015 shooting at SRM's property. (ECF  
17 No. 1.) Browning-Palmer also filed a lawsuit against SRM relating to the above-referenced  
18 claim that is currently pending in the Eighth Judicial District Court, Clark County, Nevada,  
19 entitled *Browning-Palmer v. Hines, et al.*, Case No. A-17-755668-C (the "Underlying Action").  
20 (Id.)

21 On October 13, 2020, SRM and Brennan filed a Counterclaim against RSUI, Evanston,  
22 and new parties Kaercher arising out of the insurers' and insurance brokers' alleged conduct with  
23 respect to their handling of the Browning-Palmer claim and the Underlying Action as well as the  
24 sale of certain general liability and excess insurance policies to SRM and Brennan. (ECF No.  
25 14.)

26 Thereafter, RSUI, Evanston, and Kaercher filed a number of motions to dismiss and to  
27 strike the Counterclaim. (ECF Nos. 21 – 22, 25 – 27, 32 – 34, 38, and 41 – 43.) On November  
28 24, 2020, SRM and Brennan filed a First Amended Counterclaim. (ECF No. 46.) RSUI,

1 Evanston, and Kaercher again filed a number of motions to dismiss and to strike the First  
2 Amended Counterclaim. (ECF Nos. 58 – 62.) The motions were fully briefed as of February 12,  
3 2021. On August 24, 2021, the Court issued a Minute Order denying the pending motions  
4 without prejudice based on the parties joint representations that they were attending a global  
5 mediation on September 11, 2021. (ECF No. 88.) The Court further stated that if the case did  
6 not settle, the motions could be re-filed, but cautioned that “the arguments raised in these  
7 motions are more appropriate as arguments in a summary judgment motion than in a motion to  
8 dismiss and should therefore be brought in that procedural context if the case does not settle.”  
9 (Id.) On October 8, 2021, the parties submitted a Joint Status Report advising this Court that  
10 although the case did not settle at the September 11, 2021, global mediation, some of the parties  
11 were continuing to discuss a settlement framework that may result in a settlement or partial  
12 settlement. (ECF No. 89.)

13 Counsel for the parties attended a FRCP 26(f) conference on December 16, 2020. A  
14 Joint Discovery Plan and Scheduling Order was submitted by the parties on December 18, 2020  
15 (ECF No. 55), which was entered by this Court on December 21, 2020. (ECF No. 56).

16 RSUI served its Initial Disclosures on January 15, 2021, including producing more than  
17 250 pages of documents. SRM and Brennan served their Initial Disclosures on January 15, 2021.  
18 Browning-Palmer served her Initial Disclosures on January 15, 2021. Kaercher served their  
19 Initial Disclosures on January 15, 2021. Evanston served its Initial Disclosures on January 15,  
20 2021, including producing approximately 153 pages of documents.

21 On March 8, 2021, RSUI served written discovery on Evanston, SRM, and Kaercher.  
22 Such discovery included a First Set of Requests for Production to Evanston and Kaercher and a  
23 First Set of Interrogatories and First Set of Requests for Production to SRM.

24 On March 8, 2021, RSUI also served two Notices of Issuance of Subpoena Duces Tecum  
25 to Swett & Crawford and James River Insurance Company.

26 On March 30, 2021, SRM served written discovery on RSUI, Evanston, and Kaercher.  
27 Such discovery included a First Set of Interrogatories and First Set of Requests for Production to  
28 RSUI and Evanston, and First Set of Interrogatories, First Set of Requests for Production, and

1 First Set of Requests for Admission to Kaercher.

2 On April 27, 2021, Kaercher served its responses to RSUI's First Set of Requests for  
3 Production, including producing approximately 700 pages of documents with a First  
4 Supplement to Initial Disclosures. In April 29, 2021, Kaercher served its responses to SRM's  
5 First Set of Interrogatories and SRM's First Set of Requests for Admission. On May 7, 2021,  
6 Kaercher served its responses to SRM's First Set of Requests for Production. Kaercher served  
7 its Second Supplement to Initial Disclosures on May 18, 2021, including two new documents.  
8 Kaercher served its Third Supplement to Initial Disclosures on July 23, 2021, including  
9 approximately 20 additional pages of documents.

10 On or about June 14, 2021, SRM sent Kaercher a discovery meet-and-confer letter  
11 identifying several deficiencies with Kaercher discovery responses and document production.  
12 Counsel for SRM and Kaercher held a meet-and-confer telephonic conference in late July 2021,  
13 and exchanged a number of emails. The parties are continuing to evaluate these deficiency  
14 issues.

15 The Underlying Action remains pending with continued documentation to be added to  
16 insurers' claims files as the Underlying Action progresses. Discovery activity in this action  
17 related to SRM, Brennan, RSUI, and Evanston is likely to involve disclosure of information,  
18 documents, and materials relevant to the evaluation of Browning-Palmer's claim and/or the  
19 ongoing strategy for the prosecution, defense, and resolution of the Underlying Action. As  
20 such, SRM, Brennan, RSUI, and Evanston spent a significant amount of time working out  
21 document production issues to alleviate concerns related to Browning-Palmer as a defendant in  
22 this action. This effort was required to ensure that no party gained an unfair competitive  
23 advantage in the Underlying Action through production of documents in the instant case. As a  
24 result, on June 9, 2021, the parties submitted a Stipulated Confidentiality and Protective Order,  
25 which this Court entered on June 10, 2021 (ECF No. 80). The parties also negotiated another  
26 stipulation to allow for the withholding of documents from Browning-Palmer related to SRM's,  
27 RSUI's, and Evanston's evaluation of the Browning-Palmer claim and/or the ongoing strategy  
28 for the prosecution, defense, and resolution of the Underlying Action. That Stipulation was

1 submitted on August 2, 2021 (ECF No. 84), and entered by this Court on August 3, 2021 (ECF  
2 No. 85). Based on these ongoing discussions, RSUI and SRM provided each other and  
3 Evanston with multiple extensions to respond to written discovery.

4 On June 11, 2021, SRM served a Subpoena Duces Tecum on CRC Insurance Services,  
5 Inc. fka Swett & Crawford (“Swett & Crawford”), who SRM believes to be a wholesale  
6 insurance broker that procured insurance policies for SRM. On June 30, 2021, Swett &  
7 Crawford advised SRM that it would be producing responsive documents located in its central  
8 insurance files on or before July 12, 2021; however, Swett & Crawford advised that they did not  
9 undertake a search of its emails across the company based on cost and burden concerns. SRM  
10 received Swett & Crawford document production consisting of more than 11,900 pages of  
11 documents in or about late July 2021. SRM produced Sweet & Crawford’s entire document  
12 production to all parties in the case in its Third Supplement to Initial Disclosures served  
13 September 7, 2021, and Fourth Supplement to Initial Disclosures served November 30, 2021.

14 On June 23, 2021, RSUI served its responses to SRM’s First Set of Interrogatories and  
15 SRM’s First Set of Request for Production of Documents, including producing more than 400  
16 pages of documents.

17 On June 23, 2021, Evanston served its responses to RSUI’s First Set of Requests for  
18 Production of Documents, SRM’s First Set of Interrogatories, and SRM’s First Set of Request  
19 for Production of Documents. Evanston produced approximately 600 pages of documents on  
20 June 24, 2021.

21 On June 23, 2021, SRM served its responses to RSUI’s First Set of Interrogatories and  
22 RSUI’s First Set of Requests for Production of Documents, including producing more than  
23 1,600 pages of documents. On August 17, 2021, SRM served its Second Supplement to Initial  
24 disclosures producing another 1,600 pages to all parties except Browning-Palmer pursuant to the  
25 Stipulation and Order governing documents related to the Underlying Action.

26 On June 24, 2021, RSUI served another Notice of Issuance of Subpoena Duces Tecum to  
27 CRC Insurance Services, Inc. f/k/a Swett & Crawford, notifying the parties that it would serve  
28 the subpoena on July 2, 2021.

1 James River Insurance Company has not yet responded to the Subpoena Duces Tecum  
2 issued by RSUI.

3 On or about August 12, 2021, SRM served a deposition subpoena to Deborah Lopez, a  
4 former employee of Kaercher. Based on a number of scheduling conflicts, SRM served a new  
5 deposition subpoena on Ms. Lopez re-scheduling her deposition for September 29, 2021. Ms.  
6 Lopez's deposition was ultimately cancelled. However, SRM has since learned that Ms. Lopez  
7 now resides in Washington state, so counsel will now have to coordinate travel when re-  
8 scheduling Ms. Lopez' deposition.

9 On October 8, 2021, SRM served a second set of written discovery on Kaercher related to  
10 insurance issues, which Kaercher responded to on November 29, 2021. On December 3, 2021,  
11 SRM served a meet-and-confer letter to Kaercher outlining the deficiencies with Kaercher's  
12 responses. On December 17, 2021, Kaercher advised via email that it would be supplementing  
13 its responses. Kaercher produced its Fourth Supplemental Disclosure on March 7, 2022, which  
14 include approximately 140 additional pages of documents.

15 Beginning December 2021 and for some time thereafter, SRM attempted to obtain  
16 documents and communications from SRM's prior insurance broker, L/P Insurance, regarding  
17 SRM's pre-2015 insurance policies as well as quotes that L/P Insurance obtained for insurance  
18 coverage for the 2015-2016 policy period. A document subpoena will need to be issued to L/P  
19 Insurance in order to obtain documents and communications.

20 Given the current deadlines, the parties need to or have retained their respective experts.

21 **2. Discovery that remains to be completed.**

22 Once the settling parties finalize their settlement and the claims/counterclaims between  
23 them are dismissed, the only remaining parties in this action will be Browning-Palmer (as  
24 assignee of SRM and Brennan) and Kaercher.

25 From SRM and Brennan's perspective, there remain outstanding issues with respect to  
26 Kaercher's responses to SRM's first and second sets of written discovery and document  
27 productions. As such, the remaining parties may need to continue to engage in the meet-and-  
28 confer process on these issues. Should the parties not be able to work out an agreement, a



1 discovery motion will be necessary.

2 Based on SRM review of documents currently produced, SRM (and presumptive  
3 assignee, Browning-Palmer) may also need to serve additional document subpoenas on other  
4 third parties including L/P Insurance and James River Insurance Company.

5 In addition, the remaining parties still need to take the depositions of a number of fact  
6 witnesses, including at a minimum the Fed. R. Civ. P. 30(b)(6) designee for each remaining party  
7 as well as those individual personally involved in the procurement of the relevant insurance  
8 policies. The parties, however, reserve their right to take other depositions. These depositions  
9 need to occur after documents productions by the parties and third-parties are completed.

10 Expert discovery is also remaining. The parties will also need to take expert witness  
11 depositions, which cannot be taken until experts are disclosed and reports exchanged.

12 **3. Reason why the remaining discovery cannot be completed within the time**  
13 **limits set by the Scheduling Order.**

14 As demonstrated above, the parties have been actively engaged in discovery since  
15 attending the Fed. R. Civ. P. 26(f) conference, including propounding and responding to written  
16 discovery, document productions of thousands of pages of documents, conferring regarding the  
17 protective order and other document production issues, engaging in the meet-and-confer process,  
18 serving subpoena duces tecum and deposition subpoenas on third-parties, and retaining their  
19 respective experts.

20 Nevertheless, since September 2021, the parties had been actively engaged in settlement  
21 discussions with the hope of resolving this matter (either entirely or partially). As such, the  
22 parties put substantial efforts into settlement. On September 11, 2021, the parties engaged in a  
23 full day global mediation before the Hon. Jennifer Togliatti (Ret.), and since that date, several  
24 parties continued to negotiate a resolution through Judge Togliatti. All parties in this action,  
25 except Kaercher, have agreed to settle the disputes between them. The settling parties confirmed  
26 the terms of settlement earlier this year and a written settlement agreement was recently finalized  
27 between the many settling parties and their insurance carriers. One of the settlement terms  
28 requires that this Court approve good faith settlement motions that will be filed by RSUI and



1 Evanston. Because this Court's approval on the good faith settlement motions will be necessary,  
 2 the parties desire additional time to effectuate settlement and the contemplated assignment of  
 3 counterclaims to Browning-Palmer while still providing sufficient time for SRM/Brennan (and  
 4 presumptive assignee, Browning-Palmer) and Kaercher to undertake the remaining discovery  
 5 that is needed on the remaining counterclaims and defenses thereto. The parties believe that an  
 6 additional 180 days is sufficient but not more than needed to accomplish such.

7 This is the parties' third request to extend discovery.

8 **4. Proposed discovery schedule.**

9 The parties agree and propose a 180-day extension of the discovery deadlines as follows:

- 10 a) Discovery Cut-off Date: **April 10, 2023** (formerly October 11, 2022)
- 11 b) Amend Pleadings/Add Parties: **January 10, 2023** (formerly July 13, 2022)
- 12 c) FRCP 26(a)(2) Disclosure of Initial Expert: **February 9, 2023** (formerly  
 13 August 12, 2022)
- 14 d) FRCP 26(a)(2) Disclosure of Rebuttal Expert: **March 13, 2023** (formerly  
 15 September 12, 2022)
- 16 e) Dispositive Motions: **May 10, 2023** (formerly November 10, 2022)
- 17 f) Pre-Trial Order: **June 9, 2023** (formerly December 12, 2022), but if  
 18 dispositive motions are filed, 30 days after decision on the dispositive motions  
 19 or further order of the court.

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The parties stipulate and request that the Court enter an order approving the proposed discovery schedule as set forth above.

Dated this 6th day of July, 2022.

Dated this 6th day of July, 2022.

**ARMSTRONG TEASDALE LLP**

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Dated this 6th day of July, 2022.

Dated this 6th day of July, 2022.

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**ORDER**

**IT IS SO ORDERED.**



UNITED STATES MAGISTRATE JUDGE  
DATE: 7-14-2022